



SUMMARY OF CONSULTATION

Part 91 of CASR and associated MOS for general operating and flight rules

Civil Aviation Legislation Amendment (Part 91) Regulation 2018 and
Part 91 Manual of Standards Instrument 2018

Date	August 2018
Project number	OS 99/08
File ref	D18/113684

Overview

CASA published a consultation draft of the proposed Part 91 of CASR and the Part 91 Manual of Standards (MOS) for general operating and flight rules on the CASA Consultation Hub from 27 March to 6 May 2018.

Twenty questions were asked about specific changes from the existing rules. Three general questions were asked about the appropriateness of the changes for industry.

The available responses for answering the specific questions were “yes”, “some changes required”, “no” or “not applicable”.

Feedback on Part 91 of CASR from previous consultations in 2011 and 2015 was considered and incorporated into the 2018 consultation drafts.

Respondents

We received a total of 116 submissions. Seventy-one respondents consented to having their comments attributed to them for publication on the CASA website.

Key feedback

Carriage of documents section

Question 1

New journey log requirements for international flights.

Most respondents (46%) indicated that this proposal was not applicable to them. Forty percent responded that the proposal achieved the aim of requiring a journey log to be completed for international flights in line with the requirement under the Convention on International Civil Aviation (the Chicago Convention). It should be noted that the requirement for a journey log is specified in the Chicago Convention itself and is further expanded upon in the applicable ICAO Annexes. Key feedback included:

- If they are the international standards then they are what they are. Hardly something to consult on.
- I do not undertake international flights so my comments would be uninformed.

CASA response / next steps

Noted. No amendment required.

Question 2

New ability to carry documents electronically.

Most respondents (76%) indicated support for this proposal while 8% responded that it was not applicable. The majority of written feedback to this question did not discuss the new specific new

ability to carry documents electronically but instead discussed other proposed requirements related to documents. Key feedback included:

- Need backup means if electronic document is carried. Can be another electronic device.
- Duplication of law. The electronic records act covers this. Stop replicating, not your job and adding to load.
- Clarification may be useful for the following:
 - Whether downloading of documents during flight is permissible (I assume not)
 - Whether integrity of the data (ensuring files are not corrupt) is required (although obviously advisable)
 - Requirements in relation to integrity of the device (battery going flat, does the app crash if it doesn't have a connection to the internet, etc).
- I commend CASA for introducing this regulation in recognition of the fast moving electronic flight bag landscape.
- 91.115 (2) (d) – Requires the carriage of “any operating instructions for area navigation systems fitted to the aircraft, supplied by the manufacturer of the aircraft or of the systems”. The use of “any” and “or” could be interpreted to mean both the original instructions produced by the part supplier and also the details contained in an aircraft FCOM. Airline operators do not carry both and normally just carry the FCOM version from the aircraft manufacturer (airlines in both Australia and Overseas are the same). Shouldn't the word “any” be removed (preferred), or there be inclusion of the word “either” as follows “any operating instructions for area navigation systems fitted to the aircraft, supplied either by the manufacturer of the aircraft or of the systems”.

CASA response / next steps

For operations conducted only under Part 91 of CASR, CASA does not currently intend to specify in either the regulations or the MOS a requirement for backup electronic flight bags or to specify requirements in relation to the integrity of portable electronic devices used by crew members. The pilot-in-command (PIC) has a general responsibility to ensure the safe operation of the aircraft under proposed regulation 91.100 of CASR. Any person has a responsibility under subsection 20A(1) of the *Civil Aviation Act 1988* to not operate an aircraft in a reckless manner that could endanger the life of another person.

CASA does not agree that the *Electronic Transactions Act 1999* comprehensively covers the circumstances described in this proposed regulation and therefore for the avoidance of doubt has specifically created this rule.

Requirements relating to the use of portable electronic devices are contained within proposed regulations 91.145 of CASR and 91.150 of CASR. Downloading of documents during flight is covered by these proposed regulations.

CASA notes the comments regarding the wording of proposed regulation 91.115 of CASR 1998 in relation to operating instructions for area navigation systems. CASA will amend this regulation to reflect the regulatory language used in proposed Part 121 of CASR, Part 133 of CASR and Part 135 of CASR. Amended wording would be similar to the following: “if the aircraft is fitted with computerised navigation equipment—the operating instructions for the equipment”.

Firearms section

Question 1

Removal of CASA approval for the carriage of firearms.

Most respondents (60%) indicated support for the proposal to remove the requirement for separate CASA approvals for the carriage of firearms on flights. Key feedback included:

- I agree with removing the unnecessary consultation with CASA and leaving it up to the operator and PIC (pilot-in-command).
- I assume that if the pilot in command is the owner of the firearm, then they can carry the weapon on private flights? If this is the intent then that is a sensible change.
- Being a licenced firearm owner, private pilot and having had several CASA issued authorities to transport firearms I believe this makes sense. The less red tape the better! The PIC is best placed to make this decision.

CASA response / next steps

There was confusion around the applicability and intent of this provision. The provision is intended to remove the requirement for a specific CASA approval for a licenced firearms owner to carry a firearm on an aircraft that is not operated under a certificate, i.e. a flight that would currently be classified as a private flight. There was also comment around the requirement for the PIC to consent in writing to the carriage of the firearm. Several respondents submitted that consent in writing was overly onerous, where the firearm belonged to the PIC or an acquaintance of the PIC.

CASA will remove the requirement for consent from the PIC to be in writing.

Crew members section

Question 1

Requirement for fitness for duty and removal of the prescriptive eight-hour rule for alcohol consumption.

Most respondents (51%) indicated support for this proposal. 18% indicated that some changes were required. Key feedback included:

- The eight-hour bottle to throttle should be maintained.
- Prescriptive limits should be maintained as fitness for duty is too ambiguous.
- Moving away from prescriptive limits is a move in the right direction providing guidance for alcohol consumption or use of particular over-the-counter medications is published.

CASA response / next steps

While most respondents indicated support for this proposal there was general reluctance for the removal of the eight-hour rule and many felt that a general fitness for duty rule lacked sufficient clarity.

Accordingly, CASA will reinstate the eight-hour rule, retain the general fitness for duty rule and add a prescriptive blood alcohol limit that compliments the existing Part 99 of CASR requirements.

Question 2

Proposal for cabin crew, to include non-air transport flights carrying 20 or more passengers.

The 49% of respondents indicated support for this proposal while 30% responded that it was not applicable. Key feedback included:

- A sensible interpretation of rules that have been more than adequate in other jurisdictions.

CASA response/next steps

There was significant confusion regarding how the carriage of infants impacted this rule. Infants are defined as a person less than two years old. Put simply, the maximum number of passengers permitted to be carried without cabin crew may be increased from 19 to 22 provided the extra three passengers are infants (no more than 19 passengers may be adults or children).

No amendment required.

Question 3

Proposal for a requirement for passengers to comply with cabin crew safety instructions.

Most respondents (62%) indicated support for this proposal. 18% indicated that it was not applicable to them and 11% indicated that some changes were required. Key feedback included:

- Absolute clarity in regulation is vital in this area and the wording here addresses that concern very well.
- Although I agree with the principle behind this rule, I am not sure that it should be included within Part 91 of CASR, since items relating to cabin crew on public transport aircraft are likely to be duplicated in parts 121 and 135. It would give the crew too much power.
- Comments around the appropriateness of Strict Liability for the provision.

CASA response / next steps

Part 91 of CASR requires cabin crew to be carried in certain circumstances. Portions of the Air Transport rules (Part 119 of CASR, Part 121 of CASR, Part 133 of CASR) will impose further rules regarding cabin crew requirements for air transport flights.

No amendment required.

Portable electronic devices (PEDs) section

Question 1

Proposal to remove the prescriptive list of permitted portable electronic devices (PEDs) on flights.

Most respondents (59%) indicated support for this proposal with 12% indicating some changes were required. Key feedback included:

- Need guidance on how to "determine that the operation of the device during the flight will not affect the safety of the aircraft".

- With this area moving so fast some flexibility is absolutely required and by including the absolute discretion of the pilot in command and this very well written.
- It is not possible for a commercial pilot to include the assessment of PEDs and their suitability for carriage / operations during flight. What guidance material does CASA have to instruct the pilot in their assessment?

CASA response / next steps

As per existing operator practice, CASA would anticipate operators providing guidance or operator requirements relating to the use and assessment of PEDs. Furthermore, for aircraft operated only under Part 91 of CASR, CASA will publish guidance material for these pilots.

No amendment required.

Question 2

Proposal to restrict crew members from operating PEDs where the operation would be distracting to the performance of their duties.

Most respondents (58%) indicated support for the proposal with 11% indicating some changes were required. Key feedback included:

- A number of questions around whether this included the operation of EFB's in support of their duties.
- Comments as to what constitutes a distraction.

CASA response / next steps

This rule outlines an outcome-based requirement that provides flexibility to the crew member, and the operator where applicable, to determine when the use of a PED is distracting – as opposed to necessary for the conduct of the crew member's duties.

No amendment required.

Equipment section

Question 1

Proposal to relax oxygen requirements for non-air transport operations.

Most respondents (61%) indicated support for this proposal. Key feedback included:

- This is a welcome change: Australia's 10 000 limit in CAO 20.4 para 6.1 has been out of step with our international peers and aeromedical evidence for a very long time.
- Hypoxia is insidious. Should be mandatory for safe flight above 10 000 feet.
- The requirement for oxygen should remain as is.

CASA response / next steps

Noted. No amendment required.

Question 2

A proposal to expand the requirement to preserve flight recordings (and recorders) after an immediately reportable matter while reducing the amount of time these need to be retained.

Most respondents (51%) indicated support for this proposal, while 21% of respondents indicated that it was not applicable. Key feedback included:

- Absolute clarity and consolidation of disparate rules makes this a very sensible rule.
- Just be ICAO compliant. No strict liability.
- State more clearly and explain the time period required for preserving the recordings and / or the recorders under the differing circumstances.

CASA response / next steps

Noted. CASA considers the time periods are clear in the regulations. No amendment required.

Question 3

A proposal to consolidate all the rules for the Minimum Equipment List (MEL) in one place and expand who can approve the MEL.

This proposal was supported by 46% of the respondents. While 10% indicated some changes were required and 22% responded that the proposal was not applicable. Key feedback included:

- Use manufacturers document. Just be ICAO compliant. This is way too complex and time wasting.
- We welcome this change in Division 91.Y.4 to clarify the process and accountability for extending rectification intervals. However, concerns remain about CASA's commitment and ability to monitor these extensions in order to detect operators placing their commercial interests over the safety outcomes of the continuing airworthiness regime.
- Once again a simplification of disparate rules very well received.

CASA response / next steps

ICAO MEL standards expect that national regulators will impose requirements additional to manufacturers and therefore manufacturer MELs will need to be modified to the particular national regulator requirements.

No amendment required.

Take-off and landing section

Question 1

A proposal to introduce an approach ban for Instrument Flight Rules (IFR) flights under certain circumstances.

This proposal was supported by 49% of respondents. While 9% of respondents indicated some changes were required and 22% responded that the proposal was not applicable. Key feedback included:

- If the approach is designed correctly and the pilots are complying with it, it should not affect the safety of the flight of the pilot wishes to attempt the approach in the hope that the RVR will improve while undertaking the approach even if previous conditions are below the approach minima.
- Absolutely this is one of the most encouraging rules yet. This brings Australia into line with overseas best practice and is very well received.
- Why not 'within the Final Approach Fix'? This represents the point when an aircraft will probably be in the landing configuration and where it may be safest, in terms of distractions, to allow a crew to conduct a full approach to an overshoot at DA. Concern is that crews making a decision based on altitude could run the risk of overstress or placing the aircraft in an unusual position as the conduct a non-standard overshoot from an intermediate height.

CASA response / next steps

The rule is designed to prevent an aircraft continuing an approach to the minima when there is no likelihood of becoming visual. CASA does not consider it necessary to change the height requirement to the final approach fix.

No amendment required.

Question 2

A proposal to change the existing low visibility take off and approach exemptions to an approval.

This proposal was supported by most respondents (52%). While 5% identified that some changes were required and 25% responded that it was not applicable. Key feedback included:

- For Private operations up to the Pilot in command to decide if operations are safe.
- Pilots decision is not always sensible or rational.
- This is as it should be along the lines of the AR type approvals exemptions should be necessary in this day and age and they should be approvals for certain operations

CASA response / next steps

It was apparent from the comments received that there was confusion around what constituted low visibility. In Australia the minima set by CASA are intended for broad use by pilots without requiring a specific approval/exemption. Anything less than these broad minima (that is less than CAT I minima or a take-off visibility of less than 550 m) currently requires the operator to hold a low visibility exemption and consequently is the purview of AOC holders. The proposed Part 91 of CASR includes an ability to apply for an approval to operate below the broad minima for appropriately equipped aircraft and appropriately trained pilots that are not conducting an operation under an Air Transport AOC.

No amendment required.

Flight requirements section

Question 1

A proposal to extend the ability for pilots not operating under an AOC or other certificate to use night vision imaging systems (NVIS) under certain conditions.

This proposal was supported by 50% of respondents. While 2% identified that changes were required and 33% responded that the proposal was not applicable. Less than 1% responded no to this proposal. Only 7 written responses were received. The singular written negative feedback was:

- If the intent of this rule making is to permit NVIS operations for other than an approved activity (Law enforcement, EMS, SAR, Fire Fighting, etc) then I hold serious and unwavering objections. NVIS operations rely to a certain extent [sic] on the absence of other traffic below LSALT. To permit widespread NVIS use in uncontrolled airspace increases the risk of aircraft collisions particularly as aircraft may not be using external lighting. An example might be the use of NVIS by television aircraft operating near a scene being serviced by a HEMS aircraft. This is already a risk experienced by day that becomes unmanageable at night. The ability to see and avoid other aircraft on NVIS is more difficult on NVIS and this risk is mitigated to some extent by the lack of additional aircraft traffic operating in the NVIS environment.

CASA response / next steps

The draft Part 91 of CASR policy does not permit operations below LSALT using NVIS. The specialised operations described in the comment above remain restricted to approved operators. Aircraft operated utilising NVIS in CASR 91 are required to remain above the applicable minimum height and display external aircraft lighting.

No amendment required.

Question 2

A proposal for night Visual Flight Rules (VFR) flights to use IFR lowest safe altitudes.

This proposal was supported by most respondents (76%). Key feedback included:

- This has been a long time coming and appears consistent with my NVFR training.

- Absolutely support this it goes some way to standardizing both compliance processes and training requirements. Given that in the majority of cases a NVFR operation will upgrade to an IFR from an individual perspective it will make transition to such much more seamless. The application of such a rule should improve flexibility subject to the provisions of this rule.

CASA response / next steps

Noted. No amendment required.

Question 3

A proposal for a requirement to comply with Air Defence Identification Zones (ADIZ) procedures.

This proposal was supported by most respondents (70%). Key feedback included:

- Given that this was already very clearly spelt out in the AIP and also that ADIZ procedures are very rarely used in Australia, I think this rule is a bit superfluous. We already know the procedures, there is no need for an additional rule.
- What about an emergency?
- Don't believe this should be a strict liability offence. The information is often difficult to understand as to when ADIZ are active or not. Mistakes happen and to have 50 penalty points applied for a simple mistake is not right. All pilots try to be aware and stay away from these zones when required.

CASA response / next steps

As outlined in the document provided with the public consultation depending on the specific circumstances, there are defences embedded within Commonwealth law that may apply in an emergency situation.

No amendment required.

Question 4

A proposal for a requirement to comply with aircraft interception procedures.

This proposal was supported by most respondents (68%). Key feedback included:

- I know that the AIP procedures mirror ICAO Annex Procedures, but should is rule provide some note that AIP procedures are designed to comply with the ICAO requirements as the AIP is the 'rules' to which most Australian pilots will have access?
- These signals should also be included in AIP/ERSA and the proposed 'AIM'.
- What if the PIC has a SAFETY reason for not complying with the interception procedures that overrides the interception requirements.

CASA response / next steps

Noted. No amendment required.

Question 5

A proposal to reduce the altitude above which a VFR aircraft must (where practicable) use VFR cruising levels from 5000 ft to 3000 ft AMSL (above mean sea level).

This proposal was supported by most respondents (57%) while 18% did not support the proposal and 12% responded that changes were required. Key feedback included:

- Many operators already fly at VFR cruising levels BLW 3000ft where practicable. Under this new regulation recreational flyers still retain the freedom to cruise at random altitudes BLW 3000ft which is good as it is their prerogative.
- 5000' is low enough. You need options for VFR in bad weather.
- Alignment with ICAO is a very good thing and also improves the understanding of the requirements.
- This is a bad idea in any area where VFR aircraft are operating in areas with high terrain and rapidly changeable weather, such as the entirety of Tasmania. Although it is good practice to comply with the hemispherical levels scheme whenever practical, I don't think there is much justification for lowering the cut-off height. Most IFR aircraft are above 5000 feet in the cruise anyway.

CASA response / next steps

CASA will increase the cruising level AGL requirements from 1000 ft AGL to 1500 ft AGL to provide some alleviation to the reduction of the AMSL height from 5000 ft AMSL to 3000 ft AMSL. However, CASA does not consider 3000 ft will pose safety issues in areas of high terrain as this altitude is used in the United States which contains significantly higher terrain than Australia.

Animals section

Question 1

A proposal to significantly simplify the rules for the carriage of animals in the aircraft cabin.

This proposal was supported by most respondents (69%). 9% responded that changes were required and 3% of respondents did not support the change. Key feedback included:

- Finally ability to transport animals without having to pay CASA for unnecessary red-tape.
- This is a sensible approach to the carriage of animals on flights that has long been required.
- The previous regulation regarding animals was overly prescriptive of certain conditions of carriage.

CASA response / next steps

Noted. No amendment required.

Emergency simulation restrictions section

Question 1

A proposal to restrict the simulation of certain emergencies, predominantly, in Instrument Meteorological Conditions (IMC) or at night.

This proposal was supported by most respondents (56%). While 5% did not support the proposal and 15% responded that some changes were required. Key feedback included:

- Great to have these safety margins added.
- This is an absolute must it is clear that there exists wide interpretation of what and where simulation of such failures should occur by removing ambiguity and improving safety
- Although this proposal is good in it's proscriptive nature, 91.600 (2)(f) is possibly too restrictive. Although power termination is the safest options, stipulating 100ft runs the risk of checkpilots/instructors/examiners committing an offence of strict liability unnecessarily. In fact 91.600 (1)(c)(ii) is similarly problematic.

CASA response / next steps

In response to some comments received CASA will reframe the provisions so it is dependent upon the inflight conditions (IMC, VMC) rather than the flight rules (IFR, VFR).

General response section

Question 1

Are the proposed changes to the general operating flight rules appropriate and can they be complied with by industry without undue burden?

Forty-eight percent of respondents replied 'yes' to this question while 10% responded no and 27% responded that some changes were required. Key feedback included:

- These changes seem to be sensible and responsive to industry needs. Coming from NZ, quite a bit of it looks familiar.
- Within the proposed Part 91 CASR and MOS there is increased Pilot in Command Strict Liability. An example is 91.335 in which the Pilot in Command contravenes the regulation if a check prescribed in the MOS is not carried out. This seems to mean that the PIC will have strict liability for all checks including those that are carried out by others.
- Strict liability continues to be dreadfully over used. This creates inadvertent criminals often for administrative breaches. We need to recognise any pilot under stress can make mistakes. Aviate, navigate, communicate, then administrate.
- The strict adherence to a legal template is cumbersome and encourages obfuscation.

CASA response / next steps

Strict liability offences arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. They also arise in a context where a defendant can reasonably be expected to know what the requirements of the law are, and the mental, or fault, element can justifiably be excluded.

The rationale is that people who owe general safety duties should be expected to be aware of their duties and obligations.

For strict liability offences in this regulation, the prosecution will have to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made that conduct

innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.

The inclusion of strict liability in certain offences in this regulation is consistent with the principles set out in the Attorney-General's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (September 2011) and the Sixth Report of 2002 of the Senate Standing Committee for the Scrutiny of Bills, *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* (26 June 2002).

In practice, any enforcement action contemplated by the Civil Aviation Safety Authority (CASA) is subject to the provisions of CASA's 'just culture' policy as set out in the Authority's *Regulatory Philosophy*.

Question 2

One of the aims was to primarily consolidate the current rules and carry over existing regulatory requirements. If you exclude the changes listed in the Summary of Proposed Changes, has this been achieved?

Fifty-seven percent of respondents replied 'yes' to this question while 14% responded 'no' and 14% indicated that some changes were required. Key feedback included:

- On the whole, I think it is a good start however there is still some revision required. It is good that CASA has recognised the need to reduce the volume of regulations and produce a rule set that is less convoluted.
- Not clear in this consultation version, previous versions included a mapping of previous regulations to the proposed part 91 and this greatly simplified an A-B comparison.
- Still reviewing these in combination with other Parts as they become available as it depends greatly on these. Some of the General operating rule will only work if there are provisions in other parts to exempt some operations from the Reg's in. Part 91.

CASA response / next steps

Noted. No amendment required.

Question 3

Are there any significant aviation safety risks which have not been addressed in the Part 91 of CASR draft regulations and MOS?

Forty-seven percent of respondents replied 'no' to this question while 16% replied yes while 4% identified that some changes were required. 13% answered not applicable and 20% did not answer. Key feedback included:

- Not that I can see after reading the proposed changes. I think these changes are an intelligent and long overdue upgrade to the rules which bring us in line with international standards, an area in which Australia has long been lagging behind.
- International student training in Australia, with unreadable English. present a major safety concerns. The number of training aircrafts doing circuits at any one time at uncontrolled aerodromes need to be addressed. Aerobatics over aerodromes, needs to be regulated.

- The combination of heavy penalties and strict liability provisions fosters a culture where mistakes and inadvertent infractions will be actively hidden, for fear of the repercussions.

CASA response / next steps

Noted. No amendment required.

Future direction

CASA will amend the regulations in response to issues identified during consultation including:

- Amending the wording of the carriage of documents requirement related to area navigation systems to replicate the wording used in proposed Part 121 of CASR, Part 133 of CASR and Part 135 of CASR.
- Amending the requirements regarding the carriage of firearms so that the PIC consent is not required in writing. It should be noted that aircraft being operated as an air transport or aerial work operation will have additional requirements imposed in the applicable parts in relation to this matter.
- Amending the fitness-for-duty rule to reinstate the eight-hour rule and add a prescriptive blood alcohol level requirement that complements the existing Part 99 of CASR blood alcohol level requirement.
- Amending the cruising level AGL requirements from 1000 ft AGL to 1500 ft AGL to provide appropriate alleviation in the reduction of the AMSL height from the current 5000 ft AMSL to 3000 ft AMSL.
- Amending the requirements regarding taking off and landing into wind at the non-controlled aerodromes to permit cross wind training.
- Amending the simulating emergency requirements to be conditional on the flight conditions (IMC) and not the flight rules (IFR).
- Ensuring that the existing requirements for the carriage of passengers in experimental amateur-built aircraft continue without the need for further approval.
- Amending the flight instrument equipment fitment requirements for experimental amateur-built aircraft to clarify that the approval process for installing equipment in day VFR and night VFR aircraft is not intended to become more onerous or complex.
- Amending the back-up battery requirements for EFIS fitted to experimental amateur-built aircraft to 60 mins duration.

SUMMARY OF CONSULTATION ON
PART 91 OF CASR AND ASSOCIATED MOS FOR GENERAL OPERATING AND FLIGHT RULES

- Clarifying requirements to reflect that aircraft operated VFR by day only are not required to fit or display anti-collision lights or navigation lights.
- Amending various other editorial issues that were identified in both the MOS and regulation.